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ATTORNEYS AT LAW

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TEMPE, ARIZONA 85282

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AZ CORP COMMISSION

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E-MAIL dick@sd-law.com

RICHARD L. SALLQUIST

March 12, 2008

HAND DELIVERY

Kay Kilger
Arizona Corporation Commission
Docket Control
1200 West Washington Street
Phoenix, Arizona 85007

Re: Johnson Utilities Company; Docket No. WS-02987A-08-~~00049~~; Complaint Proceeding

Dear Ms. Kilger:

In an attempt to keep the Commission fully advised regarding the status of a Superior Court proceeding related to the subject Complaint, we have enclosed copies of the Company's Notice of Deposition and its Motion for Leave to File a Second Amended Complaint.

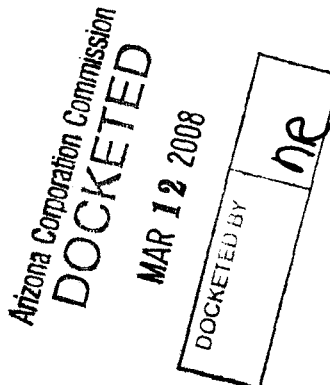
If we can provide additional information, please do not hesitate to call.

Sincerely,

Richard L. Sallquist
For the Firm

Enclosures

cc: Craig Marks (w/o enclosures)
Brian P. Tompsett



MAR 07 2008

1 Patrick J. Van Zanen (No. 021371)
2 MARGRAVE CELMINS, P.C.
3 8171 E. Indian Bend Rd, Ste 101
4 Scottsdale, Arizona 85250
5 Telephone (480) 994-2000
6 Attorneys for Defendants

7 **SUPERIOR COURT OF ARIZONA**

8 **COUNTY OF MARICOPA**

9 **JOHNSON UTILITIES, LLC, dba**
10 **JOHNSON UTILITIES**
11 **COMPANY, an Arizona limited**
12 **liability company,**

13 Plaintiff,

14 v.

15 **SWING FIRST GOLF, LLC, an**
16 **Arizona limited liability company;**
17 **DAVID ASHTON and JANE DOE**
18 **ASHTON, husband and wife;**

19 Defendants.

No. CV2008-000141

NOTICE OF DEPOSITION OF
CUSTODIAN OF DEBRA
CAMPBELL

20 YOU ARE HEREBY NOTIFIED that, pursuant to ARCP 26 and 30, the
21 deposition will be taken upon oral examination of the person whose name and
22 address is stated below at the time and place stated below before an officer
23 authorized by law to administer oaths. If the names are not known, a general
24 description sufficient to identify those persons or the particular classes or groups
25 to which those persons belong is given below:

1 **PERSON TO BE EXAMINED:**

Debra Campbell
Johnson Ranch Community Assoc. Mgr.
Johnson Ranch Community Assoc.
c/o Capital Consultants Management
Corporation
8360 E. Via de Ventura, Bldg. L-100

4 **DATE OF DEPOSITION:**

Monday, March 17, 2008

5 **TIME OF DEPOSITION:**


10:00 A.M.

6 **PLACE OF DEPOSITION:**

Margrave Celmins, P.C.
8171 E. Indian Bend Rd., #101
Scottsdale, AZ 85250

8 **DATED** this 17th day of March, 2008.

9 **MARGRAVE CELMINS, P.C.**

10 
11 Patrick J. Van Zanen
12 8171 E. Indian Bend Rd, Ste. 101
13 Scottsdale, Arizona 85250
14 Telephone (480) 994-2000
15 *Attorneys for Johnson Utilities, LLC*

16 **Original** of the foregoing filed with
17 **Maricopa County Superior Court**
18 this 17th day of March, 2008:

19 **Copies** of the foregoing mailed this
20 17th day of March, 2008 to:

21 Craig A. Marks, Esq.
22 **Craig A. Marks, PLC**
23 3420 E. Shea Blvd., Ste. 200
24 Phoenix, AZ 85028
25 *Attorneys for Swing First Golf, LLC and*
David Ashton and Jane Doe Ashton

By: 

N:\WP50\JOHNSON\Swing First Golf\Complaint.doc

1 Patrick J. Van Zanen (#021371)
2 **MARGRAVE CELMINS, P.C.**
3 8171 E. Indian Bend Rd, Ste 101
4 Scottsdale, Arizona 85250
5 Telephone (480) 994-2000
6 *Attorneys for Plaintiff*

7 **SUPERIOR COURT OF ARIZONA**

8 **COUNTY OF MARICOPA**

9 **JOHNSON UTILITIES, LLC, dba**
10 **JOHNSON UTILITIES**
11 **COMPANY, an Arizona limited**
12 **liability company,**

13 Plaintiff,

14 v.

15 **SWING FIRST GOLF, LLC, an**
16 **Arizona limited liability company;**
17 **DAVID ASHTON and JANE DOE**
18 **ASHTON, husband and wife;**

19 Defendants.

No. CV2008-000141

SUBPOENA DUCES TECUM

20 **THE STATE OF ARIZONA TO:** Debra Campbell,
21 Community Association Manager
22 Johnson Ranch Community Assoc., Inc.
23 c/o Capital Consultants Management, Corp.
24 8360 E. Via de Ventura, Bldg. L-100
25 Scottsdale, AZ 85258

YOU ARE COMMANDED to appear and produce documents as follows:

**Before Whom Appearance
Is To Be Made:**

Patrick J. Van Zanen

Date and Time of Appearance: Monday, March 17, 2008, 10:00 a.m.

Place of Production:

MARGRAVE CELMINS, P.C.
8171 East Indian Bend, Suite 101
Scottsdale, Arizona 85250
(480) 994-2000

1 **Or Mail Records To:**

Patrick J. Van Zanen
MARGRAVE CELMINS, P.C.
8171 East Indian Bend, Suite 101
Scottsdale, AZ 85250

3 **Documents to be produced:**

4 All communications, including electronic emails, between Debra
5 Campbell, Karen Councilman, Swing First Golf, David Ashton and
6 any members of the Johnson Ranch Community Association
7 regarding Johnson Utilities provision of services to the Johnson
8 Ranch Community Association, including but not limited to
communications related to Johnson Utilities' pricing of Central
Arizona Project ("CAP") water and effluent to Johnson Ranch and
members of the Johnson Ranch Community Association.

9 **YOU MAY AVOID APPEARING IN PERSON BY DELIVERING THE**
10 **REQUESTED RECORDS NO LATER THAN FRIDAY, MARCH 14, 2008,**
11 **AT 4:00 P.M. AT THE ADDRESS SET FORTH ABOVE. IF YOU**
12 **PREFER TO APPEAR IN PERSON, PLEASE CONTACT IN ADVANCE**
13 **PATRICK J. VAN ZANEN AT (480) 994-2000.**

14 You have been subpoenaed by the Plaintiff whose attorney's name, address
15 and telephone number is:

16 Patrick J. Van Zanen
17 MARGRAVE CELMINS, P.C.
18 8171 East Indian Bend Road, Suite 101
19 Scottsdale, Arizona 85250
20 Telephone: (480) 994-2000

21 **YOU ARE HEREBY NOTIFIED THAT ANY FAILURE TO OBEY THIS**
22 **SUBPOENA WITHOUT ADEQUATE EXCUSE MAY BE DEEMED A**
23 **CONTEMPT OF THIS COURT, AND A CIVIL ARREST WARRANT MAY**
24 **BE ISSUED. A CIVIL ARREST IS AN ORDER DIRECTING ANY**
25 **POLICE OFFICER IN ARIZONA TO ARREST YOU AND BRING YOU**
BEFORE THIS COURT FOR FUTURE PROCEEDINGS.

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA:

You have the duty to produce the documents requested as they are kept by
you in the usual course of business, or you may organize the documents and label
them to correspond with the categories set forth in this subpoena. See Rule
45(d)(1) of the Arizona Rules of Civil Procedure.

If this subpoena asks you to produce and permit inspection and copying of
designated books, papers, documents, tangible things, or the inspection of
premises, you need not appear to produce the items unless the subpoena states
that you must appear for a deposition, hearing or trial. See Rule 45(c)(2)(A) of
the Arizona Rules of Civil Procedure.

1 **YOUR RIGHT TO OBJECT:**

2 The party or attorney serving the subpoena has a duty to take reasonable
3 steps to avoid imposing an undue burden or expense on you. The Superior Court
4 enforces this duty and may impose sanctions upon the party or attorney serving
the subpoena if this duty is breached. See Rule 45(c)(1) of the Arizona Rules of
Civil Procedure.

5 You may object to this subpoena if you feel that you should not be required
6 to respond to the request(s) made. Any objection to this subpoena must be made
7 within 14 days after it is served upon you, or before the time specified for
compliance, by providing a written objection to the party or attorney serving the
subpoena. See Rule 45(c)(2)(8) of the Arizona Rules of Civil Procedure.

8 If you object because you claim the information requested is privileged or
9 subject to protection as trial preparation material, you must express the objection
clearly, and support each objection with a description of the nature of the
document, communication or item not produced so that the demanding party
can contest the claim. See Rule 45(d)(2) of the Arizona Rules of Civil Procedure.

10 If you object to the subpoena in writing you do not need to comply with the
11 subpoena until a court orders you to do so. It will be up to the party or attorney
serving the subpoena to seek an order from the court to compel you to provide
12 the documents or inspection requested, after providing notice to you. See Rule
45(c)(2)(B) of the Arizona Rules of Civil Procedure.

13 If you are not a party to the litigation, or an office of a party, the court will
14 issue an order to protect you from any significant expense resulting from the
inspection and copying commanded. See Rule 45(c)(2)(B) of the Arizona Rules
of Civil Procedure.

15 You also may file a motion in the Superior Court of the county in which the
16 case is pending to quash or modify the subpoena if the subpoena:

- 17 (i) does not provide a reasonable time for compliance;
- 18 (ii) requires a non-party or officer of a party to travel to a county
19 different from the county where the person resides or does
20 business in person; or to travel to a county different from where
the subpoena was served; or to travel to a place farther than 40
21 miles from the place of service; or to travel to a place different
from any other convenient place fixed by an order of a court,
except that a subpoena for you to appear and testify at trial can
command you to travel from any place within the state;
- 22 (iii) requires the disclosure of privileged or protected information
and no waiver or exception applies; or
- 23 (iv) subjects you to an undue burden. See Rule 45(c)(3)(A) of the
24 Arizona Rules of Civil Procedure.

1 If this subpoena:

- 2 (i) requires disclosure of a trade secret or other confidential
3 research, development, or commercial trade information; or
4 (ii) requires disclosure of an unretained expert's opinion or
5 information not describing specific events or occurrences in
6 dispute and resulting from the expert's study made not at the
7 request of any party; or
8 (iii) requires a person who is not a party or an officer of a party to
9 incur substantial travel expenses;

7 The court may either quash or modify the subpoena, or the court may
8 order you to appear or produce documents only upon specified conditions, if the
9 party who served the subpoena shows a substantial need for the testimony or
10 material that cannot be otherwise met without undue hardship and assures that
11 you will be reasonably compensated. See Rule 45(c)(3)(B) of the Arizona Rules of
12 Civil Procedure.

10 **IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES**
11 **ACT, QUALIFIED INDIVIDUALS WITH DISABILITIES WHO**
12 **REQUIRE AUXILIARY AIDS OR SERVICES FOR EFFECTIVE**
13 **COMMUNICATION DURING THIS PROCEEDING SHOULD CONTACT**
14 **MICHAEL L. KITCHEN AT: 480.994.2000 TO MAKE KNOWN THEIR**
15 **NEEDS AND PREFERENCES AT LEAST THREE (3) DAYS IN**
16 **ADVANCE OF THE SCHEDULED PROCEEDING.**

14 SIGNED AND SEALED this date: _____

15 CLERK OF THE SUPERIOR COURT

16
17 By Deputy Clerk

MAR 07 2008

1 Patrick J. Van Zanen (#021371)
2 **MARGRAVE CELMINS, P.C.**
3 8171 E. Indian Bend Rd, Ste 101
4 Scottsdale, Arizona 85250
5 Telephone (480) 994-2000
6 *Attorneys for Plaintiff*

7 **SUPERIOR COURT OF ARIZONA**

8 **COUNTY OF MARICOPA**

9 **JOHNSON UTILITIES, LLC, dba**
10 **JOHNSON UTILITIES**
11 **COMPANY, an Arizona limited**
12 **liability company,**

13 Plaintiff,

14 v.

15 **SWING FIRST GOLF, LLC, an**
16 **Arizona limited liability company;**
17 **DAVID ASHTON and JANE DOE**
18 **ASHTON, husband and wife;**

19 Defendants.

No. CV2008-000141

**MOTION FOR LEAVE TO FILE
THE [PROPOSED] SECOND
AMENDED COMPLAINT**

*(The Honorable Thomas Dunevant
III)*

20 Pursuant to Rule 15(a), Ariz. R. Civ. P., Plaintiff respectfully moves the
21 Court for an order granting Plaintiff leave to file a Second Amended Complaint.
22 A copy of the proposed Second Amended Complaint is attached hereto as Exhibit
23 A. This motion is urged for the reason that newly discovered evidence more
24 thoroughly reveals the extent of Defendants' defamatory statements and tortuous
25 interference. Although Plaintiff has already filed the First Amended Complaint
as a matter of right to set for the defamation and interference claims, by filing the
Second Amended Complaint, Defendants will be more fully apprised of the

1 claims against them and the evidence related thereto. This Motion is supported
2 by the memorandum of points and authorities attached hereto and incorporated
3 herein by this reference.

4
5 **MEMORANDUM OF POINTS AND AUTHORITIES**

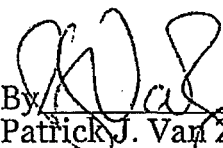
6 Leave to amend a complaint is left to the discretion of the Court, but the
7 policies of the Rules of Civil Procedure favor liberal permission to do so. *Cagle v.*
8 *Carr*, 101 Ariz. 225, 227, 418 P.2d 381, 383 (1966). Motions to amend are
9 generally granted except when there has been excessive delay, bad faith, dilatory
10 motive or repeated failure to cure deficiencies in previous amendments. *Owens*
11 *v. Superior Court*, 133 Ariz. 75, 79, 649 P.2d 278, 282 (1982). There has been no
12 such delay, bad faith or dilatory motive in this instance.

13
14 **CONCLUSION**

15 Based on the forgoing, the Court should grant Plaintiff leave to file the First
16 Amended Complaint attached as Exhibit A.

17 DATED this 10th day of March, 2008.

18
19 **MARGRAVE CELMINS, P.C.**

20 By 
21 Patrick J. Van Zanen
22 8171 E. Indian Bend Rd, Ste. 101
23 Scottsdale, Arizona 85250
24 Telephone (480) 994-2000
25 Attorneys for Johnson Utilities, LLC

1 **Original** of the foregoing filed with
2 **Maricopa County Superior Court**
this 6th day of March, 2008:

3 **Copies** of the foregoing *delivered/mailed
4 this 6th day of March, 2008 to:

5 ***The Honorable Thomas Dunevant III**
6 Maricopa County Superior Court
101 W. Jefferson, #412
Phoenix, AZ 85003

7 Craig A. Marks, Esq.
8 **Craig A. Marks, PLC**
3420 E. Shea Blvd., Ste. 200
Phoenix, AZ 85028
9 *Attorneys for Swing First Golf, LLC and*
David Ashton and Jane Doe Ashton

10
11 By: P. Capeland
12 N:\WP50\JOHNSON\Swing First Golf\Complaint.doc

EXHIBIT "A"

1 Patrick J. Van Zanen (#021371)
2 **MARGRAVE CELMINS, P.C.**
3 8171 E. Indian Bend Rd, Ste 101
4 Scottsdale, Arizona 85250
5 Telephone (480) 994-2000
6 *Attorneys for Plaintiff*

7 **SUPERIOR COURT OF ARIZONA**
8 **COUNTY OF MARICOPA**

9 **JOHNSON UTILITIES, LLC, dba**
10 **JOHNSON UTILITIES**
11 **COMPANY**, an Arizona limited
12 liability company,

13 Plaintiff,

14 v.

15 **SWING FIRST GOLF, LLC**, an
16 Arizona limited liability company;
17 **DAVID ASHTON and JANE DOE**
18 **ASHTON**, husband and wife;

19 Defendants.

No. CV2008-000141

**SECOND AMENDED
COMPLAINT**

1. Breach of Contract
2. Breach of the Covenant of Good Faith and Fair Dealing
3. Tortious Interference
4. Defamation

(The Honorable Thomas Dunevant III)

20 For its Complaint against defendant Swing First Golf, LLC ("Swing
21 First Golf"), plaintiff Johnson Utilities, LLC ("Johnson Utilities") alleges as
22 follows, by and through undersigned counsel:

JURISDICTION AND VENUE

23 1. This Court has jurisdiction over this matter because Swing
24 First Golf is a limited liability company organized under the laws of Arizona and
25 operates within Arizona.

1 2. Venue is proper in Maricopa County because Swing First Golf
2 is located in Maricopa County at 7131 W. Avenida Del Sol, Peoria, AZ 85383.

3 **PARTIES**

4 3. Plaintiff Johnson Utilities is an Arizona limited liability
5 company located in Maricopa County that provides water and wastewater utility
6 services in Pinal County, Arizona.

7 4. Defendant Swing First Golf is an Arizona limited liability
8 company located in Maricopa County, and owns and operates the Johnson Ranch
9 Golf Course in Pinal County, Arizona.

10 5. David and Jane Doe Ashton are husband and wife living in
11 Maricopa County who acted for and on behalf of the marital community at all
12 times relevant to the Complaint.

13 **GENERAL ALLEGATIONS**

14 6. Johnson Utilities is party to an Agreement Regarding Utility
15 Service (the "Agreement") dated September 17, 2004 for the provision of water
16 and wastewater services to the Johnson Ranch and properties in the vicinity,
17 including the Johnson Ranch Golf Course.

18 7. The Agreement provides Swing First Golf the right to purchase
19 effluent at a price determined by the Arizona Corporation Commission, which is
20 evidenced by the associated tariff filed with the Arizona Corporation
21 Commission.

22 8. The Agreement also provides Swing First Golf the right to
23 purchase Central Arizona Project ("CAP") water pursuant to the associated tariff
24 filed with the Arizona Corporation Commission.

1 9. Johnson Utilities provided effluent and CAP water to Swing
2 First Golf pursuant to the Agreement.

3 10. Swing First Golf has failed to fully pay for the effluent and CAP
4 water as required by the Agreement and the filed tariffs.

5 11. Despite written demand, Swing First Golf continues to refuse
6 to pay for the effluent and CAP water.

7 12. Because Johnson Utilities has sought to obtain the payments
8 from Swing First Golf to which Johnson Utilities is entitled, Swing First Golf and
9 David Ashton have embarked on a campaign to defame Johnson Utilities and
10 interfere with Johnson Utilities' existing and prospective business relationships
11 with various homeowners and homeowners' associations.

12 13. Swing First Golf's and David Ashton's actions include, but are
13 not limited to, contacting the San Tan Homeowners' Association and the Johnson
14 Ranch Homeowners' Association and telling them that Johnson Utilities has been
15 over billing them.

16 14. Swing First Golf and David Ashton's actions also include
17 providing to Karen Councilman, the Community Manager of San Tan
18 Homeowner's Association, copies of a complaint filed at the Arizona Corporation
19 Commission by Swing First Golf against Johnson Utilities, which complaint
20 contains false and damaging statements regarding Johnson Utilities.

21 15. Pursuant to Arizona Supreme Court case law, Swing First
22 Golf's actions in this regard are not protected by the judicial privilege (or any
23 other privilege) because the act of disseminating a complaint containing
24 allegations against a party is not sufficiently related to the judicial proceeding.
25

1 16. Documents subpoenaed from San Tan Homeowners'
2 Association reveal that David Ashton's written defamatory statements include,
3 but are not limited to, the following:

- 4 a. "The complaint claims that Johnson Utilities has
5 defrauded my company, Swing First Golf, LLC, of more
6 than \$120,000 in the last several years . . . "
7 b. "I believe each of your HOAs has been defrauded on a
8 greater scale than I have."
9 c. "So not only are they overcharging you, which is against
10 the law, but they *know* they are overcharging you.
11 (emphasis in original)."
12 d. "If you have ever been charged \$3.75 per thousand
13 gallons, it's possible that the utility is delivering you the
14 non-potable water but is charging you for the more
15 expensive water. It's a matter of public record that they
16 have done this before. And one can be fairly confident
17 that it happened before then as well."
18 e. "Please also be aware that for two years the Utility
19 charged me for a 6" meter when it turns out that the golf
20 course only had a 3" meter. There is a good chance you
21 have also been defrauded in this way."
22 f. "One possible way [Johnson Utilities] make[s] money is
23 to grossly overcharge you for water usage (for example
24 at \$2.25 or \$3.75 per k gallons instead of \$0.83), charge
25

you 6.7% TP tax on top of that, report to the state what you actually should have been charged (i.e. \$0.83 per k gallons), then pocketed the difference in tax money. I have no evidence this occurred but it is certainly possible."

g. "It is illegal for Johnson Utilities to charge you this rate."

h. "I'd like to have a call with you about these guys. I've recently gone through all bills I received from them the last two years and the fraud is staggering. The exercise took me almost 30 hours of analysis but now I truly understand the depth of what they've done. I have no reason to believe they've treated anyone else any better than they've treated me, hence I'm reaching out to you."

17. The statements made by Swing First Golf and David Ashton, including but not limited to those statements made to the San Tan and Johnson Ranch homeowner's associations, are false and pertain to Johnson Utilities' business dealings.

18. The statements made by Swing First Golf and David Ashton, including but not limited to those statements made to the San Tan and Johnson Ranch homeowner's associations, were made with malice, and were intended to harm Johnson Utilities' reputation in the community and utilities industry, and destroy Johnson's existing and prospective business relationships.

19. Because the false statements made by Swing First Golf and David Ashton pertain to Johnson Utilities' professional reputation, damages are presumed.

20. To the extent any of the statements are found not to be actionable as defamation, they nevertheless amount to a wrongful interference pursuant to The Restatement (Second) of Torts, §§ 766(a), (b), (c) and 767.

COUNT ONE
(Breach of Contract)

21. Johnson Utilities incorporates into this Count the previous allegations as though fully set forth in this Count.

22. Johnson Utilities and Swing First Golf entered into a valid Agreement, which remained valid and effective at all times relevant to this Complaint.

23. Johnson Utilities has performed all of its obligations pursuant to the terms of the Agreement.

24. Swing First Golf has breached the terms of the Agreement by failing to pay Johnson Utilities for the effluent and CAP water at the filed rate in accordance with the Agreement and the applicable tariff.

25. Thus, Johnson Utilities has been damaged in a liquidated amount capable of being calculated based on the filed rates and usage information, and which will be proven at trial.

COUNT TWO
(Breach of the Covenant of Good Faith and Fair Dealing)

26. Johnson Utilities incorporates into this Count the previous allegations as though fully set forth in this Count.

1 27. In every contract, including the Agreement, exists a covenant
2 of good faith and fair dealing, which prohibits either party from taking any action
3 to deny the other party the benefits that party is due under the contract
4 regardless of whether the action breaches a term of the contract.

5 28. Here, Swing First Golf breached the covenant of good faith
6 and fair dealing by denying Johnson Utilities the payment it is entitled to under
7 the Agreement.

8 29. Swing First Golf's breach in this regard is intentional as
9 evidence by its refusal to pay upon Johnson Utilities' demand.

10 30. Johnson Utilities has been injured by Swing First Golf's
11 breach in this regard.

12 31. Johnson is thus entitled to damages, including exemplary
13 damages.

14 **COUNT THREE**
15 **(Defamation)**

16 32. Johnson Utilities incorporates into this Count the previous
17 allegations as though fully set forth in this Count.

18 33. Swing First Golf and David Ashton have published to third
19 parties written and oral statements containing false information regarding
20 Johnson Utilities.

21 34. This false information published by Swing First Golf and
22 David Ashton was made with malice.

23 35. This false information published by Swing First Golf and
24 David Ashton pertains to Johnson Utilities' professional and business reputation.
25

1 36. As a matter of law, damages are presumed under the
2 circumstances involved in this action.

3 37. Nevertheless, Johnson Utilities has in fact been damaged by
4 Swing First Golf's and David Ashton's false and defamatory statements.

5
6 **COUNT FOUR**
7 **(Tortious Interference With Existing and**
8 **Prospective Contractual/Business Relationships)**

9 38. Johnson Utilities incorporates into this Count the previous
10 allegations as though fully set forth in this Count.

11 39. Swing First Golf and David Ashton have a duty not to
12 wrongfully interfere with Johnson Utilities' existing and prospective contractual
13 and business relationships.

14 40. Swing First Golf and David Ashton wrongfully and
15 intentionally interfered with Johnson Utilities' existing and prospective
16 contractual and business relationships.

17 41. The actions of Swing First Golf and David Ashton in this
18 regard caused harm to Johnson Utilities.

19 42. Due to the actions of Swing First Golf and David Ashton,
20 Johnson Utilities has suffered damages in an amount to be proven at trial.

21 WHEREFORE, Johnson Utilities respectfully prays for judgment as
22 follows:

23 A. An order from the Court adjudging, declaring and
24 decreeing that Swing First Golf breached the Agreement;
25

1 B. An order from the Court adjudging, declaring and
2 decreeing that Swing First Golf breached the covenant of good faith and fair
3 dealing implied in the Agreement;

4 B. An order from the Court adjudging, declaring and
5 decreeing that Swing First Golf and David Ashton wrongfully, willfully, and with
6 malice, defamed Johnson Utilities with regard to its business reputation and
7 thus, Johnson Utilities is entitled to damages *per se*;

8 C. An order from the Court adjudging, declaring and
9 decreeing that Johnson Utilities has in fact been damaged by the actions of Swing
10 First Golf and David Ashton;

11 D. An order from the Court adjudging, declaring and
12 decreeing that Swing First Golf and David Ashton wrongfully interfered with
13 Johnson Utilities' existing and prospective contractual and business
14 relationships, and Johnson Utilities has been damaged thereby;

15 E. A monetary judgment for Johnson Utilities and against
16 Swing First Golf in an amount to be proven at trial for breach of contract, as well
17 as tort damages for defaming Johnson Utilities and wrongfully interfering with
18 its existing and prospective contractual and business relationships;

19 F. An award of exemplary damages for Johnson Utilities
20 and against Swing First Golf and David Ashton for the tort claims alleged herein;

21 G. Judgment for Johnson Utilities and against Swing First
22 Golf for interest calculated from the date due until paid;

1 H. An award of exemplary damages for Johnson Utilities
2 and against Swing First Golf for Swing First Golf's intentional breach of the
3 covenant of good faith and fair dealing.

4 I. An award to Johnson Utilities of its attorneys' fees and
5 costs pursuant to A.R.S. § 12-341.01.

6 DATED this _____ day of March, 2008.

7 MARGRAVE CELMINS, P.C.

8
9 By _____
10 Patrick J. Van Zanen
11 8171 E. Indian Bend Rd, Ste. 101
12 Scottsdale, Arizona 85250
Telephone (480) 994-2000
Attorneys for Johnson Utilities, LLC

13 **Original** of the foregoing filed with
14 **Maricopa County Superior Court**
this _____ day of March, 2008:

15 **Copies** of the foregoing *delivered/mailed
16 this _____ day of March, 2008 to:

17 ***The Honorable Thomas Dunevant III**
Maricopa County Superior Court
18 101 W. Jefferson, #412
Phoenix, AZ 85003

19 Craig A. Marks, Esq.
20 **Craig A. Marks, PLC**
3420 E. Shea Blvd., Ste. 200
Phoenix, AZ 85028
21 *Attorneys for Swing First Golf, LLC and*
David Ashton and Jane Doe Ashton

22
23 By: _____
24 N:\WP50\JOHNSON\Swing First Golf\Complaint.doc

1 Patrick J. Van Zanen # 021371
2 **MARGRAVE CELMINS, P.C.**
3 8171 East Indian Bend Road, Suite 101
4 Scottsdale, Arizona 85250
5 Telephone: (480) 994-2000
6 *Attorneys for Plaintiff*

7 **SUPERIOR COURT OF ARIZONA**
8 **COUNTY OF MARICOPA**

9 **JOHNSON UTILITIES, LLC d/b/a**
10 **JOHNSON UTILITIES COMPANY, an**
11 Arizona limited liability company

12 Plaintiff,

13 v.

14 **SWING FIRST GOLF, LLC, an Arizona**
15 limited liability company; **DAVID**
16 **ASHTON and JANE DOE ASHTON,**
17 husband and wife,

18 Defendants.

No. CV2008-000141

**ORDER FOR LEAVE TO FILE THE
(PROPOSED) SECOND AMENDED
COMPLAINT**

(The Honorable Thomas Dunevant III)

19 The court having considered Plaintiff's Motion for Leave to File The
20 (Proposed) Second Amended Complaint and for good cause appearing
21 therefore,

22 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to File the
23 Second Amended Complaint is granted.

24 Dated: _____

25 Honorable Thomas Dunevant III
26 Judge of the Superior Court
27
28